

DEPARTMENT OF ADMINISTRATION  
GENERAL SERVICES DIVISION  
STATE PROCUREMENT BUREAU

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**AFFIDAVIT FOR TRADE SECRET CONFIDENTIALITY**

STATE OF \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss.

\_\_\_\_\_ (Affiant), being first duly sworn under oath, and representing  
\_\_\_\_\_ (hereafter "Vendor"), hereby deposes and says that:

1. I am an attorney licensed to practice in the State of \_\_\_\_\_, representing the Vendor referenced in this matter, and have full authority from the Vendor to submit this affidavit and accept the responsibilities stated herein.

2. I am aware that the Vendor is submitting a proposal to the State of Montana (State) for RFP # \_\_\_\_\_. Public agencies in Montana are required by Montana law to permit the public to examine documents that are kept or maintained by the public agencies, other than those legitimately meeting the provisions of Montana's Uniform Trade Secrets Act, Mont. Code Ann. §§ 30-14-401, *et seq.*, and that the State is required to review claims of trade secret confidentiality.

3. I have read and am familiar with the provisions of Montana's Uniform Trade Secrets Act, am familiar with the case law interpreting it, and understand that all information received in response to this RFP will be available for public examination except for:

- (a) trade secrets meeting the requirements of the Act;
- (b) matters involving individual safety as determined by the State; and
- (c) information requested by the State to establish vendor responsibility unless prior written consent has been given by the vendor, as per Mont. Code Ann. § 18-4-308 [*a separate affidavit is required*].

4. I am aware that in order for the Vendor to claim confidential material, this affidavit must be fully completed and submitted to the State, and the following conditions must be met by the Vendor:

- (a) information to be withheld under a claim of confidentiality must be clearly marked and separated from the rest of the proposal;
- (b) the proposal may not contain trade secret matter in the cost or price; and

- (c) the Vendor's explanation of the validity of this trade secret claim is attached to this affidavit.

5. I and the Vendor accept that, should the State determine that the explanation is incomplete, inadequate or invalid, the submitted materials will be treated as any other document in the agency's possession, insofar as its examination as a public record is concerned. I and the Vendor are solely responsible for the adequacy and sufficiency of the explanation. Once a proposal is opened, its contents cannot be returned to the Vendor if the Vendor disagrees with the State's determination of the issue of trade secret confidentiality.

6. I, on behalf of the Vendor, warrant that the Vendor will be solely responsible for all legal costs and fees associated with any defense by the State of the Vendor's claim for trade secret protection in the event of an open records request from another party which the Vendor chooses to oppose. The Vendor will either totally assume all responsibility for the opposition of the request, and all liability and costs of any such defense, thereby defending, protecting, indemnifying and saving harmless the State, or the Vendor will immediately withdraw its opposition to the open records request and permit the State to release the documents for examination. The State will inform the Vendor in writing of any open records request that is made, and the Vendor will have three working days from receipt of the notice to notify the State in writing whether the Vendor opposes the request or not. Failure to provide that notice in writing will waive the claim of trade secret confidentiality, and allow the State to treat the documents as a public record.

Documents that, in the opinion of the State, do not meet all the requirements of the above will be available for public inspection, including any copyrighted materials.

\_\_\_\_\_  
Affiant's Signature

Signed and sworn to before me on \_\_\_\_\_ (date) by  
\_\_\_\_\_ (Affiant's name).

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_